UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

LOCAL 340, INTERNATIONAL ASSOCIATION
OF BRIDGE, STRUCTURAL AND ORNAMENTAL
IRONWORKERS, AFL–CIO
(Consumers Energy Co.)

and Case 7–CB–14096

THOMAS E. TAYLOR, an Individual

A. Bradley Howell, Esq., for the General Counsel.
Samuel C. McKnight, Esq. (Klimist, McKnight, Sale, McClow & Canzano, P.C.), of Southfield, Michigan, for the Respondent.

DECISION

STATEMENT OF THE CASE

JOHN T. CLARK, Administrative Law Judge. This case was tried in Grand Rapids, Michigan, on December 9–10, 2004, and February 15–16, 2005. On February 27, 2004, the Regional Director for Region 7 of the National Labor Relations Board (the Board) issued a complaint and notice of hearing based on an unfair labor practice charge filed on January 7, 2004, alleging that Local 340, International Association of Bridge, Structural and Ornamental Ironworkers, AFL–CIO, (Local 340 or the Respondent) violated Section 8(b)(1)(A) and (2) of the National Labor Relations Act (the Act).

On the entire record, including my observation of the demeanor of the witnesses, as well as my credibility determinations based on the weight of the respective evidence, established or admitted facts, inherent probabilities, and reasonable inferences drawn from the record as a whole and, after considering the briefs filed by the counsel for the General Counsel and the Respondent, I make the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent admits, and I find, that Consumers Energy Company has at all material times had an office and power plant located at its Campbell Generating Complex in West Olive, Michigan, where it has been engaged as a utility providing electric power throughout the State of Michigan. The Respondent further admits, and I find, that at all material times Consumers Energy Company has been engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. That conclusion is based on the admitted allegations that, in conducting its business operations during 2003, Consumers Energy Company received gross revenues in excess of $500,000. In addition, during that same calendar year it purchased and received at

its Michigan facilities goods and materials valued in excess of $50,000 directly from suppliers located outside the State of Michigan. The Respondent also admits, and I find, that it is a labor organization within the meaning of Section 2(5) of the Act.[1]

II. ALLEGED UNFAIR LABOR PRACTICES

Bruce Hawley is the Respondent's business manager, finance secretary, and treasurer. In essence he is its chief operating officer and has held that position for almost 12 years. He has also sat on the Respondent's executive board, its governing body, for almost 15 years. Thomas Scheuneman is a business agent for the Respondent. In that capacity he is responsible for operating the Respondent's nonexclusive hiring hall in Grand Rapids. Because the hiring hall is nonexclusive, contractors may hire members directly, and they may refuse to hire members who have been referred from the hall. The Respondent has no written rules or procedures regarding the operation of the hiring hall. Thomas Taylor, the Charging Party, is a journeyman ironworker and has been a member of the Respondent for 26 years. Taylor is a member of the executive board, having been elected by the membership in July 1999, and again in July 2002.

Taylor's tenure on the executive board has not been without conflict. He has long been an outspoken critic of Local 340's leadership, specifically, Hawley and Scheuneman. In the summer of 2000 Taylor voiced a complaint, during a general membership meeting, protesting the Respondent's award of "targeting funds" to contractors who were laying off dues paying members, while retaining trainees and preapprentices who, although union members, did not pay dues. Target fund money is provided by the dues. In essence the money is a subsidy the Respondent provides to signatory contractors, under the terms of the collective-bargaining agreement, to subsidize the wages of the contractors' union employees. The subsidy helps the contractor to compete with nonunion contractors. During an executive board meeting in the spring of 2002 Taylor again addressed the topic of target funds. A proposal was made to give target funds to a union contractor in order to gain favor with the contractor in upcoming collective-bargaining negotiations. Taylor opposed the proposal and the issue was tabled. Later in the year Taylor learned that the funds had been approved, notwithstanding his belief that the executive board had not voted on the proposal. Although the record indicates that Taylor was mistaken about not voting on this proposal, Hawley was aware that Taylor was complaining to other members that he was not being called to vote on awarding target funds to union contractors. Scheuneman also acknowledged that he knew of Taylor's complaints both directly, and from other Ironworkers. Taylor also credibly testified that he called Hugh Coward the Respondent's business agent in Battle Creek, Michigan, and a member of the executive board, to complaint about not being called to vote on the expenditure of the target funds.

In late December 2002 or early January 2003, Taylor contacted Chris Copoch, the Respondent's pension fund administrator, to confirm his understanding that the pension fund had lost $24 million. The fund is jointly administered by six trustees, three trustees representing the contactors and three representing Local 340. After confirming the loss with Copoch, Taylor raised the issue with other union members. In early 2003 he spoke directly with the president of Local 340, Ken Dumas. Dumas, along with Hawley and Scheuneman, are the three union trustees. Taylor told Dumas that he knew that the fund had suffered significant loses and that

[1] Par. 9 of the complaint was amended at the start of the hearing to replace "retain" with "refer" (Tr. 6). The Respondent's unopposed motion to correct the transcript is granted. See R. Br. p. 4, fn.1; p. 20, fn.14; and p. 31, fn. 19. The transcript is also corrected to indicate that the direct examination of Scheuneman was conducted by Mr. Howell (Tr. 206).

the money had to be moved before they lost it all. Dumas replied that "we're working on getting them changed," "we're doing what we can do." Taylor encouraged him to move quickly, before the entire pension fund was lost.

Hawley and Scheuneman acknowledged that they were aware of Taylor's complaints about the losses incurred by the pension fund—Hawley even heard that Taylor accused him of stealing money from the pension fund. They also admitted that they knew that Taylor had not only made complaints to other Ironworkers but had registered complaints with the International Union. Scheuneman testified that Taylor spoke at every union meeting and most often he was critical of Hawley, Scheuneman, or both. Taylor also credibly testified, without refutation, that he and Hawley had a "very heated" confrontation at an executive board meeting in January 2003, over the issue of the Respondent appointing the job foreman to also be the union steward on the same job. Taylor argued that this practice took a job away from another member. Taylor told Hawley that "this is your job to straighten this out" (Tr. 240).

During the same time period there was yet another disagreement between Taylor and Hawley. Taylor was working for Robinson Cartage, a contactor, on an outside job. The temperature was about 8 degrees above zero and Taylor complained to his coworkers, the union steward, and the management of Robinson Cartage about not having a warming trailer on the job. Hawley believed that a trailer was unnecessary because the men could get warm in their vehicles. Taylor spoke out on this issue at a general membership meeting in February 2003. He emphasized that a warming trailer was required on that job, that it was necessary under such frigid conditions, and that the Respondent had given Robinson Cartage $50,000 of target funds. Although the members at the meeting, including Hawley, indicated their approval of Taylor's comments, Hawley confronted Taylor at the March executive board meeting about his remarks. Hawley told Taylor "If you've got something to say, you say it in here. You don't take it out on the floor" (Tr. 243). Taylor testified that he could tell by the tone of Hawley's voice that he was upset. Hawley, at Taylor's insistence and after Taylor was laid off, contacted David Scripps, president of Robinson Cartage and had a warming trailer brought to the job.

In June 2003, Taylor arranged to be hired in September by Monarch Construction, for a job at the Consumers Energy J.H. Campbell Plant in West Olive, Michigan. Linda Remington, formerly employed as a secretary by the Respondent, testified that she overheard Hawley talking on the telephone with Richard Kasper sometime during the first week in August. She was certain it was in the beginning of August, "the week before the festival. So—about the 3rd or 5th of August, something like that" (Tr. 20). Because the 3rd was a Sunday the date most likely is the 5th as alleged in the complaint. Kasper is responsible for managing construction projects for Consumers Energy at its J.H. Campbell Plant. Remington's credible and unrefuted testimony is that Hawley told Kasper that Taylor would be a problem on the jobsite, and that Kasper would be sorry because Taylor was a troublemaker.

Business Agent Scheuneman admitted that he asked Bob Armstrong, a member of the Respondent's executive board, and a foreman and steward at Robinson Cartage, to ask Dave Mitchell, superintendent for Robinson Cartage, to write a letter about Taylor. Mitchell testified that he was approached by Armstrong in August 2003. Armstrong said that he had been told to ask if Mitchell would write a letter stating that Robinson Cartage did not want Taylor working for them anymore. Mitchell said, "Absolutely not," because he regarded Taylor as an excellent iron-worker. (Tr. 58–59.) I Mitchell's testimony is undisputed and I find him credible. Remington, whose desk was between those of Hawley and Scheuneman, heard Scheuneman tell Hawley that Mitchell refused to write the letter. Hawley responded "that is bullshit" and said that he would get Scripps to write it, and he did. (Tr. 23–24.)

It is undisputed that during August 2003 either Hawley or Scheuneman solicited management officials, in addition to Mitchell and Scripps of Robinson Cartage, to provide documentation of any trouble or problems that they had with Taylor during his employment with their companies. The following employers, all of whom are signatory contractors under the terms of the collective-bargaining agreement, were solicited, Northern Boiler Mechanical Contractors, Rapids Construction LLC., AZCO Construction, Neux's Welding, Monarch Welding Services, and Erickson's Inc.

In December 2003 and January 2004, Taylor requested to be placed on the Respondent's out-of-work list. On January 22 Taylor learned that Ironworker Darrell Kidder, who had only recently been laid off, was being sent out by the Respondent to Steelcon, Inc., to work on the Metro Hospital job in Grand Rapids. Thereafter, Taylor called Scheuneman and asked his location on the out-of-work list. Scheuneman said he was about the same place that he was the day before. Taylor asked why Kidder, who had just been laid off, was sent out before him. Scheuneman replied that Jim Mansfield, an executive board member, was appointed the steward on the Metro Hospital job and wanted Kidder as his "traveling partner." Taylor argued that it was not the practice for the steward to select who would work on the job and that the out-of-work list should be used. Scheuneman said he would call him. Taylor said he would go the National Labor Relations Board. Scheuneman replied "You're suing the [expletive deleted] Local with all these frivolous bullshit charges and you're putting us through all this bullshit." "We're going to sue you and make you pay all our legal fees." Scheuneman said in conclusion "Well, when they need men, you'll get a call." (Tr. 253.)

A. Paragraph 10 of the Complaint.

Paragraph 10 of the complaint alleges that "[o]n or about January 22, 2004, Respondent, by its agent Tom Scheuneman, threatened retaliation against the Charging Party because of his charge-filing activities against the Respondent." Paragraph 11 alleges that the Respondent's conduct, set forth above, has been restraining and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act, in violation of Section 8(b)(1)(A) of the Act.

The Respondent only disputes Taylor's recollection that Scheuneman said "We're going to sue you" and contends that Scheuneman merely stated that "we ought to sue" (Tr. 494). Were I to find it necessary to make a credibility determination on this matter I would credit Taylor's more specific and emphatic testimony over Scheuneman's generalized statement. I find, however, that the Respondent's distinction is without significance. I also find no support in the record for the Respondent's contention that because Taylor was a member of the executive board that he knew that Scheuneman did not have the authority to instigate a lawsuit.

A threat by a union to resort to civil courts as a tactic calculated to restrain employees in the exercise of rights guaranteed by Section 7 of the Act has long been held to violate Section 8(b)(1)(A). *IBEW Local 11,* 258 NLRB 374, 375 (1981). Accordingly, I find that the Respondent has violated Section 8(b)(1)(A) of the Act when its agent, Tom Scheuneman, threatened Taylor that the Respondent was going to sue him and make Taylor pay all the Respondent's legal fees.

Additionally, I find no merit to the Respondent's contention that a letter dated July 29, 2004, (R. Exh. 7) from its attorneys to Taylor stating that the Respondent "has not and will not retaliate or discriminate against you in any way because you have filed unfair labor practices charges" has remedied the violation. See *Passavant Memorial Area Hospital,* 237 NLRB 138 (1978). Accord: *Sam's Club,* 322 NLRB 8, 9 (1996), enfd. 141 F.3d 653 (6th Cir. 1998).

B. Paragraphs 7, 8, and 9 of the Complaint

Each of theses paragraphs allege that the Respondent, by its agents, took certain actions against Taylor because of his protected concerted and dissident union activities. Before addressing the individual allegations some tenets need to be reviewed.

Section 8(b)(2) of the Act provides that it is an unfair labor practice for labor organizations "to cause or attempt to cause an employer to discriminate against an employee in violation of subsection (a)(3)" of the Act—that is, "in regard to hire or tenure of employment or any term or conditions of employment to encourage or discourage membership in an labor organization." "[D]irect evidence of an express demand by [a labor organization] is not necessary where the evidence supports a reasonable inference of a union request." (Citations omitted.) *Avon Roofing & Sheet Metal Co.,* 312 NLRB 499, (1993). "It is immaterial that no explicit threat or demand was made," *Carpenters Local 2396 (Tri-State Ohbayashi),* 287 NLRB 760, 763 (1987), because it is firmly established that the statutory requirement of "cause or attempt to cause" is satisfied by an "efficacious request," *San Jose Stereotypers (Dow Jones & Co..),* 175 NLRB 1066 fn. 3 (1969), or by "an inducing communication . . . in terms courteous or even precatory." *NLRB v. Jarka Corp. of Philadelphia,* 198 F.2d 618, 621 (3rd Cir. 1952).

Although the Respondent does not operate an exclusive hiring hall, even where a union operates a nonexclusive hiring hall, it violates Section 8(b)(1)(A) of the Act when it discriminates against members in retaliation for their protected activities. Whenever the General Counsel's case rests on the Respondent's discriminatory motivation, as it does here, the Board has held that the analytical framework elucidated in *Wright Line* 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982), applies. See, e.g., *Teamsters Local 657 (Texia Productions, Inc.)* 342 NLRB No. 59, slip op. at 1 fn. 1 (2004).

Under *Wright Line,* the General Counsel must introduce persuasive evidence that animus toward the protected activity was a substantial or motivating factor in the Respondent's action. Once that has been done, the burden of persuasion shifts to the Respondent to demonstrate that it would have taken the same action even in the absence of the protected activity. *Manno Electric,* 321 NLRB 278, 280 fn. 12 (1996). To sustain the initial burden, the General Counsel must show (1) that the employee was engaged in protected concerted activity; (2) that the Respondent had knowledge of the activity; and (3) that the activity was a substantial or motivating reason for the Respondent's adverse action. *Naomi Knitting Plant,* 328 NLRB 1279, 1281 (1999). Direct evidence of unlawful motivation is seldom available and it may be established by circumstantial evidence and the inferences drawn from that evidence. E.g., *Abbey Transportation Service, 284 NLRB 689, 701 (1987); FPC Molding, Inc. v. NLRB,* 64 F.3d 935, 942 (4th Cir. 1994); *Shattuck Denn Mining Corp.,* 362 F.2d 466, 470 (9th Cir. 1966). The Board has long held that a Respondent "cannot simply present a legitimate reason for its actions but must persuade by a preponderance of the evidence that the same action would have taken place even in the absence of the protected conduct." *Key Food* 336 NLRB 111, 112 (Citations omitted.) (2001). "A finding of pretext necessarily means that the reasons advanced by the [Respondent] either did not exist or were not in fact relied upon, thereby leaving intact the inference of wrongful motive established by the General Counsel." *Limestone Apparel Corp.,* 255 NLRB 722 (1981), enfd. 705 F.2d 799 (6th Cir. 1982).

1. The General Counsel's case

The counsel for the General Counsel has established that at least as early as the summer of 2000, approximately 1 year after being elected to the executive board, Taylor was at odds with the leadership of Local 340. Taylor spoke out at general membership meetings, as well as executive board meeting, concerning what contractors were receiving job targeting funds and the conditions under which they received the funds. During the summer of 2000 Scheuneman warned Taylor that he had better watch what he said at the general membership meetings or he would be blackballed. Scheuneman denies making the threat. I find, contrary to Scheuneman's denial, that Taylor appeared to be the more credible witness when testifying about this incident. In addition to Taylor's demeanor when testifying about this incident, I find the threat consistent with the threat that Scheuneman admits making to Taylor, above, and that was found to be a violation of the Act.

Undaunted, Taylor continued to criticize the leadership of Local 340, especially Hawley and Scheuneman. He voiced his complaints to individual members, during general membership and executive board meetings, and to the International Union. It is undisputed that Taylor is an outspoken individual who is not the least bit reluctant to share his opinions and beliefs on any topic, especially Hawley's and Scheuneman's inadequacies in the administration of Local 340. During the spring of 2002 Taylor continued to complain about the use of the target fund. On one occasion he opposed disbursing target funds to gain favor with a contractor with whom the Respondent had upcoming collective-bargaining negotiations. Although the issue was tabled, it was eventually passed by the executive board. At times the executive board votes on issues by telephone. Taylor believed at the time, erroneously it appears from the record, that he had not been contacted to vote on the measure. He expressed his belief in a telephone conversation with Hawley who responded with a vulgarity and hung up on him. Although Hawley testified extensively about the target funds, his testimony regarding his knowledge of Taylor's complaints about his handling of the funds was evasive and obfuscatory. He eventually conceded that he knew that Taylor was complaining about not being asked to vote on disbursements, and that he had stopped calling him, but he never specifically refuted Taylor's testimony regarding swearing and hanging up on him. I credit Taylor, and find that his testimony regarding the incident provides additional evidence of animus towards him by Hawley, an admitted agent of the Respondent.

Taylor's protected activities continued to irk Hawley during 2003. In January Taylor addressed the general membership meeting about Robinson Cartage receiving targeting funds, but refusing to provide a warming trailer on the job. Shortly thereafter, Hawley ordered Taylor to confine his comments to the executive board meetings and not make them at the general membership meetings. Also in January, Hawley and Taylor had a heated argument over appointing foremen to also be the job steward. Hawley also knew that Taylor was complaining to the International Union about the mismanagement of the Local. Hawley had also been told that Taylor had conveyed to the International his belief that Hawley had stolen money from the pension and targeting funds. Hawley admitted that he was unhappy with the accusations and Scheuneman confirmed that Hawley was upset by the complaints.

As set forth above, Linda Remington credibly testified that during the first week of August 2004 she overheard Hawley's call to Richard Kasper, who is responsible for managing construction projects for Consumers Energy. Hawley said that Taylor would be a problem on the jobsite, and that Kasper would be sorry because Taylor was a troublemaker. Remington also credibly testified, without contradiction, that Hawley, upon learning that Mitchell would not

provide a letter denouncing Taylor, said "Bullshit" and that he would obtain the letter from Scripps, the owner of Robinson Cartage. Remington also testified, in response to a question asked on cross-examination, that there was animosity between Local 340 officers and Taylor.

Based on the foregoing I find that the General Counsel has met his initial burden of showing that Taylor's protected conduct and other dissident union activity was a motivating factor in the Respondent's actions against Taylor. The burden now shifts to the Respondent to show that the same action would have taken place even in the absence of Taylor's protected activity.

2. The Respondent's defenses

a. Paragraph 7 of the complaint

This paragraph alleges that on or about August 5, 2003, Hawley attempted to cause Consumers Energy Company from allowing the employment of the Charging Party by its subcontractors because of his protected concerted and dissident union activities.

In addition to being an agent of the Respondent, Hawley is the president of the West Michigan Building Trades, an association of fifteen unions. Acting in both capacities Hawley attended a meeting with Kasper, in June or July 2003, to discuss staffing for upcoming work. According to Hawley, Kasper stated that he wanted to avoid any work stoppages or disruptions. Hawley claims that after the meeting he told Kasper, as he had previously done, that the only way to work out issues related to the workforce was to have the contractors present because they hire the workers. Hawley used Taylor as an example of a man who "does not get along," but who was hired by a subcontractor. Kasper asked Hawley what he was talking about. Hawley told him of a year–old incident where Taylor threatened a boilermaker, concerning a jurisdictional dispute between the trades, regarding which trade would perform a specific job function. Taylor was working for Alstom Power, a subcontractor of Consumers Energy, at the time. Hawley claims that Kasper asked him if he wanted Kasper to do something about Taylor and Hawley said "no," he only wanted contractors to attend prejob conferences. (Tr. 535–537.)

When questioned by the Respondent's attorney, Hawley stated that it was in October 2003 when he called Kasper and informed him that Taylor was once again employed by a contractor. He claims that he called because he received several calls from business agents of other trades complaining that Monarch Welding had begun to hire workers without having a prejob conference. His stated purpose was to request that Kasper insist that Monarch have a prejob conference. Hawley did admit that, included with a complaint that Monarch was hiring relatives, he added that Monarch had even hired Taylor, the same guy that he (Kasper) had previously complained about being a problem.

Richard Kasper was subpoenaed by the counsel for the General Counsel to testify. Kasper appeared to be a totally creditable witness, who was unbiased and disinterested in the outcome of the proceeding. His lack of total recall of the events enhanced his credibility. As he testified, the entire incident amounted to nothing more than receiving a call from Hawley that caused him to make a simple inquiry. He testified that he did not recall the exact date of the conversation, but agreed that it was sometime in the summer of 2003. He remembered Hawley saying that the Ironworkers were having some issues with Taylor. As a result of the conversation Kasper discovered that Taylor was employed by Monarch. When Kasper made inquiry of Monarch he was told that they had no issues with Taylor. Kasper also testified that at no time did Monarch report any problems with Taylor. Kasper acknowledged that Hawley, at some point in time, had communicated a complaint from some members of the West Michigan

Building Trades that some contractors were not holding prejob conferences. However, he clearly indicated that Consumers had no intention of becoming involved in who its subcontractors hired.

When question by counsel for the General Counsel, Hawley said that his call to Kasper occurred in early August. That response is consistent with Remington's credible testimony that she heard Hawley call Kasper during the first week in August, "the week before the festival" (Tr. 20), and Kasper's recollection that it occurred sometime in the summer. When being questioned by Respondent's counsel Hawley stated, without clarification, that the call was made in October. I find that the Hawley's call to Kasper, where he alerted Kasper that Taylor was a troublemaker and that Kasper would be sorry that Taylor was hired, occurred during the first week of August. Counsel for the General Counsel also correctly points out that Hawley stated in his affidavit to a Board agent that he did not recall speaking with Kasper about Taylor. Hawley admitted that it was only shortly before the trial began that he submitted a letter correcting his affidavit, and admitting that he had talked to Kasper. As set forth above, at the trial he not only remembered talking to Kasper about Taylor, but in doing so on two occasions, and exhibited absolutely no hesitancy in telling the details of each conversion. I do not believe that Hawley could accurately relate two conversations with Kasper but not, at an even earlier point in time, ever recall having spoken with Kasper about Taylor.

I find that Hawley is not a totally credible witness. I do not doubt that he pressed Kasper, on various occasions, to encourage the subcontractors to hold prejob conferences. As alluded to by Hawley (Tr. 566), a major benefit of a prejob conference is that the unions and the subcontractor can either resolve before hand, or at least minimize, potential jurisdictional disputes among the trade unions. Putting aside for the moment Taylor's alleged language, a jurisdictional dispute was the crux of his disagreement with the boilermaker. Jurisdictional disputes are not unusual and Kasper indicated that he was familiar with disputes over work assignments. This being so, why then did Hawley feel it necessary to provide Kasper with an example of why prejob conferences were needed. Even more to the point, why was it necessary to identify Taylor by name. Especially in light of the fact that Kasper had not a clue regarding the incident Hawley was talking about, a clear indication that Kasper had either forgotten the incident or, what is far more likely, never knew about it in the first place. Even more telling is that Hawley, an Ironworker, who acknowledges "gray areas" of work jurisdiction between the trades (Tr. 520), put the entire blame for the dispute squarely on Taylor. Not once did he suggest that the boilermaker was in the wrong for trying to do Ironworkers work. Paul Marvin, an Ironworker who was the general foreman on the Alstom job, and who was present on the day of the incident, describes the work in question as "red iron . . . that can be awarded, to the Pipe Fitters but, as an Ironworker, you always try to keep red iron as yours (Tr. 159)."

Hawley testified that he told Kasper during the call, that Monarch had hired Taylor "the same guy that he [Kasper] had complained about before and had been a problem before (Tr. 539)." I find no predicate in the record for the assertion that Kasper had any previous problem with Taylor. Kasper was never asked about any problem he might have had with Taylor. Kasper's credited testimony, both his language and his demeanor when testifying, left no doubt that Kasper had never been, and had no intention of being, involved in the hiring practices of Consumers' subcontractors, let alone having any "problem" with an employee of a contractor. Furthermore, Kasper's actions after the conversation are inconsistent with that assertion. Had Kasper had a problem with Taylor he need not ask Monarch anything about Taylor. All that was required was for Kasper to order Monarch to remove Taylor from the job, a fact acknowledged by Hawley as a right under the collective-bargaining agreement.

I fully credit Kasper's testimony and I find that his recollection encompassed all that was said during the phone conversation. Kasper clearly remembered exactly why Hawley called—to remind him that Taylor, "that troublemaker" was once again employed by one of Consumers' subcontractors, along with the implication that Kasper "would be sorry" if he did not act to remove Taylor. I further find that Hawley called Kasper during the first week of August, over a month before Taylor actually began work for Monarch. Hawley admitted that he learned that Taylor had gotten a job and that in the "normal course of things" he does not call a contractor when he learns that an Ironworker has gotten work on his own. I also find that Hawley used his conversation with Kasper regarding prejob conferences as a ruse to have Kasper connect Taylor's name and a year–old incident, with problems. Kasper, by asking Hawley if he wanted Kasper "to do something" about Taylor, indicated that he was attuned to Hawley's message. Hawley's call to Kasper was a subtle attempt to have Kasper cause Monarch to terminate Taylor because of his protected concerted and dissident activities. *Carpenters Local 2396 (Tri-State Ohbayashi),* 287 NLRB 760, 763 (1987); *San Jose Stereotypers (Dow Jones & Co.),* 175 NLRB 1066 fn. 3 (1969); *NLRB v. Jarka Corp. of Philadelphia,* 198 F.2d 618, 621 (3rd Cir. 1952).

Accordingly, I find that the Respondent failed to show that the same action would have taken place even in the absence of Taylor's protected activity and I find that the Respondent has violated Section 8(b)(1)(A) and (2) of the Act, as alleged.

b. Paragraph 8 of the complaint

Paragraph 8 alleges that since on or abut August 21, 2003, the Respondent, by its agents Hawley and Scheuneman, has coerced employers that have collective-bargaining agreements with the Respondent, to provide the Respondent with signed letters precluding the Charging Party from further employment with such employers because of his protected concerted and dissident union activities.

On August 13, 2003, Taylor filed an unfair labor practice charge alleging that the Respondent would not put him to work and that when he got "his own jobs they [the Respondent] tell the contractors not to hire me." The charge names two individuals and the contractors who employ them, and states that shortly after Taylor was hired directly by those individuals, they were approached by Scheuneman who told those individuals that Taylor should not have been hired. [R. Exh. 4(a).] In an attempt to refute the charge Hawley decided "to call employers, just to prove that it was not us, trying to keep him from work. It was contractors telling us that they did not want him." Hawley admits that obtaining documentation was not an original idea, but one he learned at the National Labor College and at seminars conducted by the International Union and the National Building Trades. He states that he was told "when you have somebody you have a problem with, just make a document, put it in a file; get a letter, from the contractor, put it in the file, make sure you keep things documented." (Tr. 543–544.)

Scheuneman's testimony differs somewhat. He also implies that the solicitation of letters would be limited, but limited to those contractors who had complained about Taylor, in Hawley's version the solicitation should be limited to those contractors who told the Respondent that they did not want Taylor sent to the job. Scheuneman also testified that he and Hawley never discussed calling contractors who had not complained about Taylor. (Tr. 465, 475.)

Although I agree with Hawley's instructors, I also believe that documentary evidence that is prepared spontaneously and contemporaneously with the incident or event that the document purports to memorialize, is generally given greater probative weight than that which is prepared

long after the incident or event occurred, and is solicited. The Respondent offers only the Erickson letter as a letter that is alleged to have been prepared spontaneously and contemporaneously with the incident.

The Erickson letter (GC Exh. 4) was drafted by Steve Erickson, president of Erickson's Inc., allegedly in 1997, a day or two after he laid off employees Taylor and John Klanderud, for engaging in a fist fight. Scheuneman was the rigging foreman on the job. Erickson testified on direct examination that Scheuneman called him and he "believes" Scheuneman asked him to send Scheuneman a copy of the letter that Erickson sent in 1996 or 1997. When questioned on cross-examination, literally only minutes later, Erickson could only recall that Scheuneman said "something to do with Tom Taylor." (Tr. 344, 348.) Scheuneman testified that he called Erickson and "told him that we had some complaints, from Tom Taylor, that we were denying him [employment] . . . .[I]f there was any way he could write me a letter saying that he had problems with Taylor in the past." According to Scheuneman, Erickson said that he had already written a letter to the Local. Scheuneman said that it must have been before he began working for the Respondent. Erickson said that he would look through his "files and see if I can find it and he said, I will just redo it." (Tr. 467–468.) It is somewhat ironic, yet of concern, that notwithstanding Hawley's expressed belief in documentation, the only letter which allegedly was sent in close proximity to the incident it documented cannot be found. Indeed, Scheuneman did not even make an attempt to locate the letter.

Erickson initially testified that he terminated Taylor and Klanderud for fighting. The letter states that they "were promptly fired and removed from the site." Later he admitted that they were laid off. He claims that was easier for him. Easier perhaps, but layoff most certainly carries a much different connotation. Taylor also testified, in contrast to the letter, that he was not notified of the layoff until the next day. General Counsel Exhibit 4 is allegedly a purported copy of the letter Erickson sent in 1997, except for the date. The "letter" is a single page fax. The Erickson letterhead is in the upper right hand corner. "Fax," in bold letters is in the upper left, and directly beneath is the typical "fax information" i.e., to, from, subject, phone and fax numbers, and the date, which is August 1, 2003. At the very top of the sheet is the date the fax was sent, August 29, 2003. Erickson stated that the letter was "probably on my computer" and "I probably updated it." "I might have updated it and re-sent it." And finally, in response to a question to compare (in his mind) General Counsel Exhibit 4 with the letter he sent in 1997, he stated "I would have changed the date. (Tr. 344.) Erickson was never asked, nor did he attempt to explain why he would change the date on an original document that he was going send to Scheuneman as a purported copy of the document he wrote in 1997. Furthermore, the August 1, 2003, date appears to be the date the fax was prepared. No date is in the portion of the fax that contains the purported letter. Respondent's counsel takes a leap of faith, not supported by the record, and claims that the letter was mistakenly dated August 1, 2003, but was faxed on August 29, 2003 (R. Br. at 12 fn. 10). Counsel apparently bases his conclusion on testimony that he elicited from Scheuneman (Tr. 469):

> Q. Do you recall when you got that letter?
>
> A. The fax came through, on August 29th, on a Friday, at 11:00 a.m.
>
> Q. Okay. So, the letter must be misdated but the fax date is correct.
>
> A. The fax is correct. That is when it came, to our office.

Thus, the record is left with Respondent's counsel concluding that the letter is misdated; I do not share his conclusion. It is difficult to accept this discrepancy as just a simple mistake. Obviously, one number is at the beginning of the month, and the other at the end. Moreover, the actual numbers are significantly dissimilar, i.e., it is not August 1 but should be 21. It is conceivable that the fax was prepared on August 1, before the charge was filed, but not sent until after. The name "Tom" in the salutation is also of interest. Is it just coincidence that the current business agent, and the person who requested the copy, is Tom Scheuneman and that the business agent in 1997, before Scheuneman, was also named Tom? Or is this another, forgotten, example of Erickson updating a document that purports to be a copy.

I am uncomfortable not only with the discrepancies in the letter, but with the total absence of any attempt at explanation. Accordingly, I give credence to the letter only to the extent that it was faxed to the Respondent on August 29, 2003. Because of the discrepancies in the letter, and Erickson's failure to address the discrepancies, as well as his shockingly abrupt lost of memory on cross-examination, I credit his testimony only to the extent that it accords with Taylor's. Taylor testified that Erickson told him that he felt that he had to lay both men off, or be sued by Klanderud. In that same conversation Erickson assured Taylor that when things settled down he would bring Taylor back. Taylor credibly testified that he worked for Erickson in 1998, 2000, and 2002 without incident. Assuming that Erickson ever said that he would never hire Taylor, clearly he had a change of heart. The letter, under any circumstance, would be of only slight probative value. Taylor also credibly testified that he called Erickson in June or July 2003 and asked for work. Erickson said he had none. Taylor asked him if he had signed a letter, Erickson said "no" and that when work was available he would hire Taylor, but he has never called Taylor.

After Dave Mitchell of Robinson Cartage refused to provide unfavorable comments about Taylor, because he regarded Taylor as an excellent worker, Hawley said "Bullshit" and called David Scripps, president of Robinson Cartage, directly. The Robinson Cartage job is where Taylor advocated for a warming trailer to be placed on job, in opposition to Hawley's position. The letter Scripps sent is brief, redundant, and offers no reason why Robinson Cartage no longer wants Taylor sent to any of its jobs. (GC Exh. 2). Scripps testified that he had approached Hawley during a lull in a collective-bargaining session during the summer of 2003 (after the trailer incident) and "said something" about problems that Brian Barnes (the job superintendent before Mitchell) had made him aware of with Taylor. Scripps' testimony, even on direct examination, was vague, inconsistent and confusing. When asked if he told Hawley whether he would hire Taylor in the future, he responded "No. I just said when—when I asked for men to be sent out to a job, I just did not want Tom Taylor sent out, to the job." In response to the question of why he did not want Taylor sent to a job he stated, "I think he was—I will put it this way: like a rotten apple where he would kind of, spread disharmony with the crew and all the men, on the jobsites and the customers notice that, as well." Notwithstanding the previous response when asked if he ever confronted Taylor he replied, "No. I never had a need to." (Tr. 378–379.)

Scripps admitted that he was only an "occasional visitor" to the jobsite where Taylor worked (Tr. 377). He also said that he could only recall the conversations that he had with Barnes regarding Taylor, but none that he may have had with Mitchell. Scripps never offered any evidence of customer involvement, let alone dissatisfaction, with Taylor. It is apparent from Scripps' testimony that his knowledge of Taylor, slight though it is, is based exclusively on second hand information from Barnes regarding Taylor actions in trying to obtain a warming

trailer. Even Hawley acknowledged that Taylor's complaint regarding the warming trailer was legitimate. It is also clear, from the brevity of their discussion, that Hawley knew that the only issue Scripps had with Taylor was about the warming trailer and that Scripps' decision never to rehire Taylor was unreasonable and unjustified.

Hawley's unquestioned acceptance of Scripps' letter makes it patiently clear that the Respondent's only interest in soliciting these letters was to interfere with Taylor's attempts at future employment. Hawley asked Scripps to put in writing the complaints that he had made to Hawley about Taylor (Tr. 545). The letter mentions no complaints, nor does it indicate any reason for dissatisfaction with Taylor. Scripps invites Hawley to contact him if he has any questions or concerns, but there is no evidence that Hawley ever felt the need to do so. The fact that Hawley was satisfied with the letter, without more, is indicative of the true purpose of the solicitation.

AZCO is the only contractor named in Taylor's August 13, 2003 charge that was called by the Respondent. Taylor alleged in the charge that he was hired directly by AZCO's field superintendent, Bob Polsin. Thereafter, Scheuneman told Polsin that he should not have hired him. Taylor alleged a violation of Section 8(b)(1)(A) and (2) of the Act. AZCO was the structural steel contractor on the DeVos Convention Center in 2002. Polsin did directly hire Taylor and Klanderud. After doing so he told Scheuneman. Scheuneman said "good luck." Polsin, not surprisingly, asked "what do you mean by that." Scheuneman told him that the two men did not get along very well, but there would not be a problem as long as Polsin had good supervision. Scheuneman then gratuitously volunteered that neither man got along with nonunion employees, but again, he assured Polsin that with good supervision Taylor would be all right. The Respondent submits that subsequent to receiving the charge, Hawley spoke to Polsin and asked him to document some of his problems with Taylor. The Respondent acknowledges that the letter (GC Exh. 3) is "basically positive." The letter also gives no indication that AZCO had any reason to reject Taylor for employment in the future. Nor is there evidence that Polsin, or any AZCO personnel, had ever had any complaint about Taylor. Indeed, no witness from AZCO was presented to testify. Not only did AZCO not complain about Taylor but in 2004 he was offer reemployment. Thus, there is no justification for the solicitation of AZCO for a letter on Taylor. AZCO never hinted that it would not rehire Taylor, hence Hawley's reason—to establish that "it was contractors telling us that they did not want him" is bogus, as well as is Scheuneman's—to only solicit letters from contractors who had complained about Taylor. The AZCO solicitation meets neither criterion.

Scheuneman also never reconciled his testimony that he and Hawley never spoke about calling employers who had not complained about Taylor (Tr. 475), with his call to Robert B. Hubert, Chief Engineer for Northern Boiler Mechanical Contractors. Scheuneman acknowledged calling Hubert, during the summer of 2003, and asking if Northern Boiler had any "troubles" with Taylor on any projects, and **if** they did would they be willing to document the troubles. Northern Boiler had none. Once again there is no evidence, other than Respondent's wishful thinking, that there had ever been a problem with Taylor.

Based on the foregoing, I am convinced that the Respondent was attempting to take advantage of a fortuitous event—the filing of a Labor Board charge, to expedite its attempts to interfere with Taylor's future employment opportunities. As such I find the reason advanced by the Respondent to be a pretext, thus leaving intact the inference of wrongful motive established by the General Counsel." *Limestone Apparel Corp.,* 255 NLRB 722 (1981), enfd. 705 F.2d 799 (6th Cir. 1982). I find that the Respondent violated Section 8(b)(1)(A) and (2) of the Act as alleged.

c. Paragraph 9 of the complaint

This paragraph alleges that on or about January 22, 2004, Respondent, by its agent Scheuneman, failed to refer the Charging Party to a job with Metro Hospital because of his protected concerted and dissident activities and charge filing activities.

In January 2004 Scheuneman was asked to refer two "hook-on" men to work for Steelcon, a contractor, on the Metro Hospital job. Scheuneman referred Jim Mansfield and Darrell Kidder. On January 22, Kidder told Taylor that he (Kidder) was being sent to the sent Metro Hospital job, notwithstanding that Kidder had only recently been laid off from another job, and had not yet signed onto the out-of-work list. Taylor, who had been on the out-of-work list for 2 months, called Scheuneman and asked his ranking on the list. Scheuneman replied that he was about at the same place as he was yesterday. Taylor testified that this was Scheuneman's standard answer to that question. Taylor said that he knew about Kidder and asked why Scheuneman was not going by the list. Scheuneman replied that Mansfield, who had been appointed steward on the job, had asked for Kidder as a traveling partner. Taylor told Scheuneman that it was not a practice for the steward to pick his own people and that it was Scheuneman's job to follow the list. Scheuneman said that he would call Taylor when they needed men. The conversation ended when Scheuneman made a threat to Taylor, which I found violated Section 8(b)(1)(A) of the Act, above.

There can be no doubt of Scheuneman's animosity towards Taylor. Even during the brief exchange set out above, Scheuneman could not refrain from giving Taylor a snide, non-responsive answer to a simply, inoffensive, question. When Taylor spoke of exercising his right to go the Board to challenge Scheuneman's allowing Mansfield to select a "traveling partner," who was not even on the out of work list, Scheuneman responded by threatening Taylor with financial loss.

The evidence establishes that Taylor is competent to perform the hook on work, and the Respondent does not contend otherwise. The Respondent does assert that "hooking on" requires teamwork, and thus, Mansfield was allowed to select his partner. What immediately comes to mind is why the individual selected is not referred to as the "hooking on partner." I believe that phrase would be far more descriptive than "traveling partner," which in my mind connotes carpooling. Taylor may also have been confused because he specifically challenged the steward's right to choose a traveling partner. When asked by counsel for the General Counsel if he had ever told other of the Respondent's members of this right of the steward, Scheuneman said "I have never told anybody that. It happens." However, in response to counsel for the General Counsel's very next question, did he ever tell Taylor that a steward had that right, Scheuneman's said, "I may have" and then proceeded to admit that he and Taylor argued over that subject, until Scheuneman threatened Taylor. (Tr. 492–493). A shifting reason, like the one offered here, supports an inference that the reason proffered is a pretext. *Enjo Architectural Millwork,* 340 NLRB No. 162 (2003).

Scheuneman also testified that he would not have even considered Taylor for the hook on job because Taylor and Mansfield do not get along. This conclusion is based on an incident that happened in June 2000 when Taylor was working for Mansfield. Taylor testified that he and Mansfield were having a dispute. Mansfield, who Taylor said was huge, close to 400 pounds, told him that he was going to beat him up. Mansfield was standing over Taylor at the time and Taylor said "I will gut you like a hog" and Mansfield backed off (Tr. 512). Taylor creditably testified, without contradiction, that since that incident he and Mansfield have worked together several times and that Taylor has also worked for him. I find that Taylor's past history with Mansfield is not the real reason that he was not referred to the Metro Hospital job.

I find, based on the strong evidence of animus against Taylor, and the Respondent's shifting explanations, that the real reason that Taylor was not referred to the Metro Hospital job was to punish him for his protected concerted and dissident activities and charge filing activities. Accordingly, I find that the Respondent violated Section 8(b)(1)(A) of the Act, as alleged.

It is necessary to address, and reject, one last contention argued by the Respondent. Throughout the proceeding the Respondent has attempted to portray Taylor as a quasi-sociopath who, since being elected to the executive board in 1999, "has created a long record of threatening contractors, members of Local 340 and the staff and leadership of Local 340." This contention is not supported by credible evidence.

The only credible testimony of an actual altercation was the fight that occurred in 1997 between Taylor and Klanderud. Taylor credibly testified that the altercation was initiated by Klanderud. Even as between the two participants the incident seems well in the past. They were hired together by AZCO and apparently worked that job without incident.

The threat to Mansfield occurred in 2000 at the Donnelly plant in Newaygo, Michigan. ABB was the contractor that employed the men. Taylor admitted making the statement, but to him it was a matter of self-defense. Taylor was not dismissed or reprimanded for making the statement. Mansfield did not testify, nor is there evidence that the Respondent attempted to solicit a letter from either Donnelly or ABB. Taylor, as set forth above, credibly testified has he has also worked with Mansfield, since the exchange, without incident.

The only other threatening statement that Taylor acknowledged occurred on a Friday evening in 2000 when Taylor was at home drinking beer. He was called by Tim Brennan, an ironworker and a member of the Respondent. He told Taylor that Hawley said that he was trying to get a committee together to throw Taylor out of the Local. Taylor said, "if a man messes with another man's livelihood, he is liable to get shot. Taylor offered no explanation other than he had had a few beers and ironworkers talk like that. (Tr. 616–617).

Paul Marvin, Taylor's general foreman on the Alstom job, attributed several threats of violence to Taylor. In addition to the boilermaker with whom Taylor had the jurisdictional dispute, Marvin said Taylor made threats to himself, Superintendent Joe Cory, Hawley, and Doug Powell, a safety coordinator. Marvin specifically stated that he took the threats seriously. I assume that Marvin also took seriously the punch he claims Taylor threw at him. I do not credit Marvin's testimony regarding either the alleged threats or the punch. Taylor credibly denied the threats. Marvin's testimony is inconsistent with his affidavit and his actions, or more accurately, his inactions. Marvin, Taylor's general foreman, neither reprimanded nor dismissed Taylor for any of the alleged misconduct. Marvin offers that Taylor was not discharged because Taylor is "probably one of the best Ironworkers there is" (Tr. 163), that may be so, but I still find Marvin's testimony incredulous. Even more incredible is Marvin's reaction after Taylor swings, and misses, "I just stood there and smiled. . . ." Taylor is not a large man. He appears to be middle-aged, with a compact build. Marvin is also, however, not of imposing stature. I find it beyond belief that he withstood an assault on his person with only a smile on his face. Once again, the Respondent did not attempt to obtain a letter from the contractor regarding the numerous threats alleged by Marvin, which apparently occurred in early 2002.

The testimony of Pete Cinder is also inconsistent with his affidavit. He testified that he heard Taylor make threats about the Respondent's officials a hundred times during a six week period. In his affidavit he mentions hearing a threat only one time. Cinder also testified that during that same time period he allowed Taylor to ride to work with him. I find it doubtful that

Cinder was willing to ride with Taylor, for two hours a day, with Taylor being engaged it what must be described as a continuous rant. Cinder also admitted that after he reported the alleged threats to Scheuneman he signed a petition stating that he did not believe Taylor was a threat to any member of the Respondent. He claims that he signed the petition as a result of peer pressure. Peer pressure may also explain the totally exaggerated testimony of the other witnesses who testified regarding the threats.

Linda Remington acknowledged the animosity between Taylor and the Respondent's officers. She testified that she did not like the way Taylor was being treated. I do not think she is alone in her belief. Taylor has supporters, or he would not have twice been elected to the executive board. But he also has detractors some of whom testified during the hearing. It would appear that there is a faction within the Respondent, and the members are choosing sides. Regardless, in this instance it is clear that the Respondent has undertaken unlawful actions in an attempt to restrain Taylor in the exercise of the rights guaranteed him in Section 7 of the National Labor Relations Act.

CONCLUSIONS OF LAW

1. Consumers Energy Company is an employer within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Respondent, Local 340, International Association of Bridge, Structural and Ornamental Ironworkers, AFL–CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. The Respondent violated Section 8(b)(1)(A) of the Act by

(a) On or about January 22, 2004, by its agent Thomas Scheuneman, failing to refer Thomas Taylor, the Charging Party, to a job with Metro Hospital because of his protected concerted and dissident activities and charge filing activities.

(b) On or about January 22, 2004, by its agent Thomas Scheuneman, threatening retaliation against Thomas Taylor, the Charging Party, because of his protected concerted and dissident activities and charge filing activities.

4. The Respondent violated Section 8(b)(2) of the Act by

(a) On or about August 5, 2003, by its agent Bruce Hawley, attempting to cause Consumers Energy Company from allowing the employment of Thomas Taylor, the Charging Party, by its subcontractors because of his protected concerted and dissident union activities.

(b) On or about August 21, 2003, by its agents Bruce Hawley and Thomas Scheuneman, coercing employers that have collective-bargaining agreements with Respondent, to provide Respondent with signed letters precluding Thomas Taylor, the Charging Party, from further employment with such employers because of his protected concerted and dissident union activities.

5. The unfair labor practices committed by the Respondent are unfair labor practice affecting commerce within the meaning of Section 2(6), and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

The Respondent having taken unlawful action against Thomas Taylor it shall be ordered to make him whole for any loss of earnings and other benefits, he may have suffered as a result of the Respondent's unlawful actions. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), plus interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

I shall also order that within 14 days of the date of this Order the Respondent shall provide written notification to Consumers Energy Company, Robinson Cartage, Northern Boiler Mechanical Contractors, Rapids Construction LLC., AZCO Construction, Neux's Welding, Erickson's Inc., and Monarch Welding Services, with a copy furnished to Thomas Taylor, that it has no objection to the employment of Thomas Taylor.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[2]

ORDER

The Respondent, Local 340, International Association of Bridge, Structural and Ornamental Ironworkers, AFL–CIO, Grand Rapids, Michigan, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Failing to refer Thomas Taylor, or any member, from the hiring hall because they engaged in protected concerted and dissident activities and charge filing activities.

(b) Threatening retaliation against Thomas Taylor, or any member, because of their protected concerted and dissident activities and charge filing activities.

(d) Attempting to cause Consumers Energy Company, or any employer, from allowing the employment of Thomas Taylor, or any member, by its subcontractors because of the member's protected concerted and dissident union activities.

(e) Coercing employers that have collective-bargaining agreements with the Respondent to provide the Respondent with signed letters precluding Thomas Taylor, or any member, from further employment with such employers because of their protected concerted and dissident union activities.

(f) In any like or related manner restraining or coercing our members in the exercise of the rights guaranteed them by Section 7 of the Act.

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[2] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Make Thomas Taylor whole for any loss of earnings and other benefits suffered as a result of our unlawful action against him in the manner set forth in the remedy section of the decision.

(b) Provide written notification to Consumers Energy Company, Robinson Cartage, Northern Boiler Mechanical Contractors, Rapids Construction LLC., AZCO Construction, Neux's Welding, Erickson's Inc., and Monarch Welding Services, with a copy furnished to Thomas Taylor, that the Respondent has no objection to the employment of Thomas Taylor.

(c) Within 14 days from the date of this Order, remove from its files any reference to its unlawful action against Thomas Taylor, including all letters received from Consumers Energy Company, Robinson Cartage, Northern Boiler Mechanical Contractors, Rapids Construction LLC., AZCO Construction, Neux's Welding, Erickson's Inc., and Monarch Welding Services, and within 3 days thereafter notify Thomas Taylor in writing that this has been done and that the letters obtained from the contractors will not be used against him in any way.

(d) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all hiring records, dispatch lists, out of work lists, referral slips and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by the Region, post at its union office and hiring hall in Grand Rapids, Michigan, copies of the attached notice marked "Appendix."[3] Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current members and former members who were members at any time since August 5, 2003.

[3] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. August 19, 2005.

_____
John T. Clark
Administrative Law Judge

APPENDIX

NOTICE TO MEMBERS

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this Notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain on your behalf with your employer
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities.

WE WILL NOT fail to refer any member from the hiring hall because they engaged in protected concerted and dissident activities and charge filing activities.

WE WILL NOT threaten retaliation against any member because of their protected concerted and dissident activities and charge filing activities.

WE WILL NOT attempt to cause any employer from allowing the employment of any member, by its subcontractors because of their protected concerted and dissident union activities.

WE WILL NOT coerce employers that have collective-bargaining agreements with us, to provide us with signed letters precluding any member from further employment with such employers because of their protected concerted and dissident union activities.

WE WILL make Thomas Taylor whole for any loss of earnings and other benefits resulting from our unlawful action against him, less any net interim earnings, plus interest.

WE WILL provide written notification to Consumers Energy Company, Robinson Cartage, Northern Boiler Mechanical Contractors, Rapids Construction LLC., AZCO Construction, Neux's Welding, Erickson's Inc., and Monarch Welding Services, with a copy furnished to Thomas Taylor, that we have no objection to the employment of Thomas Taylor.

WE WILL Within 14 days from the date of this Order, remove from our files any reference to our unlawful action against Thomas Taylor, including all letters received from Consumers Energy Company, Robinson Cartage, Northern Boiler Mechanical Contractors, Rapids Construction LLC., AZCO Construction, Neux's Welding, Erickson's Inc., and Monarch Welding Services, and WE WILL within 3 days thereafter notify Thomas Taylor in writing that this has been done and that the letters obtained from the contractors will not be used against him in any way.

LOCAL 340, INTERNATIONAL ASSOCIATION
OF BRIDGE, STRUCTURAL AND ORNAMENTAL
IRONWORKERS, AFL–CIO

_____

(Labor Organization)

Dated _____ By _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

477 Michigan Avenue, Federal Building, Room 300
Detroit, Michigan 48226-2569
Hours: 8:15 a.m. to 4:45 p.m.
313-226-3200.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, 313-226-3244.